IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.261 OF 2006

Jet Airways (I) Ltd. ...Petitioner
vs.

Sahara India Commercial
Corpn. Ltd. and others. ...Respondents

Mr.Harish Salve Sr.Counsel with Mr.Ravi Kadam A.G., Mr.Janak Dwarkadas, Sr.Counsel, Mr.Zal Andhyarujina, Mr.R.J.Gagrat, Ms.Gayatri Goswami, Mr.V.N.Kulkarni, Ms.Sheetal Avhad, Mr.S.Chakravarty and Mr.Anuj Sharma Ms.Meenakshi Grover and Mr.Ankur Chawla i/b. Gagrats, for Petitioners.

Mr.Rohit Kapadia, Sr.Counsel with Mr.Pradeep Sancheti, Satish Kishanchandani, Jatin Pore, Sajit Suvarna and Avantika Bajaj i/b. DSK Legal, for Respondent nos.1 to 7.

and

SUIT (LODGING) NO.2721 OF 2006

Sahara India Commercial
Corpn. Ltd. and another. ...Petitioners

vs.

Jet Airways (I) Ltd. & others. ...Respondents

Mr.Aspi Chenoy, Sr.Counsel with Ms.Anjali Chandurkar, Satish Kishanchandani, Jatin Pore, Sajit Suvarna and Avnatika Bajaj i/b. DSK Legal, for Petitioners/Plaintiffs.

Mr.Harish Salve Sr.Counsel with Mr.Ravi Kadam A.G., Mr.Janak Dwarkadas, Sr.Counsel, Mr.Zal Andhyarujina, Mr.R.J.Gagrat, Ms.Gayatri Goswami, Mr.V.N.Kulkarni, Ms.Sheetal Avhad, Mr.S.Chakravarty and Mr.Anuj Sharma

Ms.Meenakshi Grover and Mr.Ankur Chawla i/b. Gagrats, for Respondent no.1.

Mr.R.D.Suvarna for Respondent no.2.

Mr.Virag Tulzapurkar with Sandip Parikh & Prashant Beri i/b. Beri & Co. for Respondent no.3.

and

SUIT (LODGING) NO.2720 OF 2006

Sahara India Investment Corpn. Ltd. and others. ...Petitioners

vs.

Jet Airways (I) Ltd. & others. ...Respondents

Mr.Aspi Chinoy with Ms.Anjali Chandurkar, Ms.Neha Buide, Mr.Satish Kishanchandani, Jatin Pore, Sajit Suvarna and Avantika Bajaj i/b. DSK Legal, for Petitioners.

Mr.Harish Salve Sr.Counsel with Mr.Ravi Kadam A.G., Mr.Janak Dwarkadas, Sr.Counsel, Mr.Zal Andhyarujina, Mr.R.J.Gagrat, Ms.Gayatri Goswami, Mr.V.N.Kulkarni, Ms.Sheetal Avhad, Mr.S.Chakravarty and Mr.Anuj Sharma Ms.Meenakshi Grover and Mr.Ankur Chawla i/b. Gagrats, for Respondent no.1.

Mr.R.D.Suvarna for Respondent no.2.

CORAM: D.K.DESHMUKH, J.
DATED: 21st September,2006

P.C.:

1. All these proceedings are heard together pursuant to the order passed by the Supreme Court in Transfer Petition No.502 of 2006. For the purpose of this

order parties can be described as "Jet Airways" & "Sahara ".

2. Jet Airways is a company incorporated under the Companies Act and is engaged in the business of operating commerical airlines. Jet Airways entered into a Share Purchase Agreement dated 18-1-2006 with the Sahara India Commercial Corporation Limited. and other share holders in Sahara Airlines Limited. For sale of the share-holders of Sahara Airlines Limited to Jet Airways the salling shareholders enteredxxxxxxxxx. Prior to the entering into of the Share Purchase Agreement (S.P.A.), ICICI Bank limited as the escrow agent and one Raju Mimami as the client entered into the terms and conditions of the escrow agreement on 17-1-2006. In this agreement, Jet Airways and Sahara were the beneficiaries. The SPA was subsequently amended by the parties. It appears that under the deal agreed between the parties, Rs.2000 crore were kept in escrow with the ICICI Bank. Thereafter, pursuant to the agreement between the parties Rs.500 crore out of Rs.2000 crores which were in escrow account were given to Sahara. In this transaction, the parties entered into a Pledge agreement pursuant to which the selling shareholders of Sahara pledged the shares which they had agreed to

transfer to Jet Airways to secure repayment of the amount of Rs.500 crores. At the same time, Jet airways entered into guarantee agreement with Mr.Subroto Roy Sahara, one of the selling share holders giving personal guarantee in relation to the amount of Rs.500 crores, which was given to Sahara by Jet Airways from the escrow account. It appears that dispute arose between the parties in relation the completion of the deal in the month of June, 2006. There is an arbitration clause in the SPA. On 20-6-2006 the selling shareholders of Sahara filed two petitions under Section 9 of the Arbitration & Conciliation Act before the District Judge at Lucknow seeking certain interim measure of protection. Jet Airways also filed an application under Section 9 in this court on 20-6-2006 which is registered as Arbitration Petition No.261 of 2006 seeking certain interim measure of protection. Jet Airways also filed a summary suit being Summary suit No.1822 of 2006 in this Court seeking a decree against Mr.Suborto Roy Sahara. This summary suit is based on the personal guarantee agreement between the Jet Airways and the said Mr.Suborto Roy Sahara.

3. In this background Jet Airways moved Transfer Petition No.502 of 2006 before the Supreme Court

under Section 25 of the Code of Civil Procedure seeking transfer of the two petitions filed by Sahara under Section 9 of the Arbitration Act before the District Court, Lucknow to this Court. That Transfer Petition has been disposed of by the Supreme Court by its order dated 28th August, 2006. It is pursuant to the order passed by the Supreme Court that these matters are placed before this court.

4. The learned Counsel appearing for the Jet Airways submits that Jet Airways had filed a Transfer petition before the Supreme Court seeking an order from the Supreme Court for transfer of the two petitions filed by Sahara in Lucknow court. The Supreme Court by its order dated 28th August, 2006 has directed this court to make an inquiry whether there is inherent lack of jurisdiction in this court to entertain the petitions which have been filed by Sahara in the Lucknow Court. The learned Counsel submits that a petition under Section 9 of the Arbitration Act can before the court. The term "court" is defined by the Arbitration Act in Section 2(1)(e) of that Act. The learned Counsel in order to find out whether a particular court has jurisdiction to entertain the proceedings filed under Section 9 of the Arbitration Act, an inquiry has to be made to

find out whether had there been no arbitration clause a suit on the same subject matter could have been instituted in that court. The learned counsel submits that the jurisdiction of this court to entertain the civil suit is governed by Clause 12 of the Letters Patent. According to clause 12 of the Letters Patent, if the Defendant in the civil suit resides or carries on business within the teritorial jurisdiction of this court, then, civil suit can be instituted in this court. In so far as the present case is concerned, in so far as the dispute arising out of the SPA in relation to which Sahara made an application under Section 9, Jet Airways is the Defendant and therefore, had the civil suit been filed on the same subject matter by Sahara, that civil suit could have been filed in this Court because Jet Airways carries on business and has its registered office within the teritorial limits of this court. Therefore, this court has jurisdiction to entertain both the applications filed by Sahara under Section 9 of the Act in the Lucknow court.

5. The learned Counsel further submits that the disputes in relation to which the two petitions under Section 9 have been filed in the Lucknow court arose out of the SPA. It is submitted that an escrow

account is an integral part of the SPA. Clause 14 of the Escrow agreement confers exclusive jurisiction on this court to entertain the disputes arising out of the Escrow agreement. The learned counsel submits that Sahara had joined the ICICI bank which the Escrow agent as a party to the petition filed by it under Section 9. In that petition reliefs affecting the Respondent No.3 are claimed. A direction against the ICICI, the Escrow agent is also claimed. It is further pointed out that in that application in paragraph 9, Sahara has stated that only a part of cause of action has arisen within the jurisdiction of the Lucknow court. It is further submitted that even the Pledge agreement is also a part of the deal. Clause 18:2:1 and 18:2:2 of the Pledge agreement confer exclusive jurisdiction on this court to deal with the dispute arising out of the Pledge agreement. According to the learned Counsel the Pledge agreement arose out of SPA. The learned Counsel further submits that the agreement of guarantee on which the summary suit is based on clause 8:2:1, which confers exclusive jurisdiction of this court to entertain civil suit in relation to the dispute arising out of guarantee agreement. The learned Counsel submits that therefore in view of these various clauses in these agreement it can be said that not only that

there is no inherent lack of jurisdiction in this court, but this court has an exclusive jurisdiction to entertain the disputes between the parties arising out of the SPA and the other connected agreements. The learned Counsel submits that as escrow agreement, the pledge agreement and the guarantee agreement are integral part of SPA and as the escrow agreement, the pledge agreement and the guarantee agreement confer exclusive jurisdiction on this court, this court will have the exclusive jurisdiction to deal with disputes arising out of the SPA. The learned Counsel submits that even if the SPA is taken by itself this court will have the jurisdiction, though not exclusive, to entertain the disputes arising out of that agreement. The learned Counsel submits that under clause 20 of the SPA, the notices and communications required to be given to the parties under that agreement are to be given at the addresses which are mentioned in that clause and these addresses including of Sahara are of Mumbai. The learned Counsel submits that this agreement specifically refers to the agreed consideration between the parties being kept in the Escrow account which is with the ICICI Bank in Mumbai. Therefore, the amount of consideration agreed under the agreement was to be paid at Mumbai and therefore, atleast part of cause of action for

launching a litigation which arises purely under the SPA would arise within the teritorial jurisdiction of this Court and therefore, it cannot be said that this court inherently lacks jurisdiction to entertain the dispute between the parties. The learned Counsel submits that in view of the provisions of clause 12 of the Letters Patent in relation to the dispute arising purely out of SPA only a part of cause of action arose within the teritorial jurisdiction of this court and therefore the leave under Clause 12 may be necessary. But according to the learned Counsel that aspect is not relevant for deciding whether this court would have the jurisdiction to entertain the petition filed under Section 9 of Sahara at Lucknow. Because, the Sahara would not be required to take any leave under Clause 12 of the Letters Patent, because Jet Airways who is the opponent in those proceedings carries on business within the teritorial limits of this court. The learned Counsel further submits that it is clear from the order of the Supreme Court that this court will be entitled to entertain the two applications filed by Sahara at Lucknow only on this court finds that it does not inherently lack jurisdiction in the matter. When this court can entertain a civil suit or an application after granting leave to the litigation

does not show that this court inherently lacks jurisdiction to entertain the litigation. The learned Counsel submits that pursuant to the order of the Supreme Court it is not necessary for this court to make an inquiry as to whether the petition filed by Jet Airways in this court under Section 9 is maintainable in this court or not? That inquiry may be made by this Court when this court takes up that petition for hearing on merits and if an objection in that regard is raised by Sahara. The present inquiry, according to the learned Counsel, is only to find out pursuant to the Supreme Court order whether there is inherent lack of jurisdiction in this court to entertain two petitions filed under Section 9 by Sahara at Lucknow. So far as the summary suit is concerned, the learned Counsel submits that an inquiry into the aspect whether the summary suit can be entertained by this court or not is not required to be made at this juncture. That inquiry can be made by this court as and when the summons for judgment comes for hearing before this court. The learned Counsel submits that in any case the summary suit is entirely based on the guarantee agreement and guarantee agreement has a clause which confers exclusive jurisdiction on this court and therefore, in any case the summary suit based on the guarantee

agreement would be maintainable in this court and in no other court. It is submitted that when a court can entertain any proceeding after granting leave to the litigant, it cannot be said that that court inherently lacks jurisdiction to entertain this proceedings. In support of this submissions reliance is placed on a judgment of the Supreme Court in the case of **Hira Lal Patni v/s. Sri Kali Nath, AIR 1962 SC 199.**

6. On behalf of Sahara , on the other hand, it is submitted that an application for transfer of the proceedings filed in Lucknow district court to this court was made because Jet Airways filed Section 9 petition in this court, therefore, this court has first to make an inquiry into the question whether Section 9 petition and summary suit filed by Jet Airways in this Court is maintainable or not and if this court finds that it lacks inherent jurisdiction to entertain Section 9 petition and summary suit, then there is no question of transferring the two Section 9 petitions filed by Sahara at Lucknow. It is submitted that so far as Section 9 petition the summary suit are concerned, at best it can be said that only part of cause of action has arisen within the jurisdiction of this court, therefore, in terms

of the provisions of Clause 12 of Letters Patent, this court cannot entertain the suit and the petition without the Petitioner/Plaintiff obtaining Clause 12 leave. In the present case admittedly Jet Airways has not obtained Clause 12 leave and therefore neither Section 9 petition nor the summary suit are maintainable in this court. In support of this submission reliance is placed on a judgment of the learned single judge of this Court in the case of **Tata International Ltd. v/s. Trisuns Chemicals Industry Ltd., 2002(2) Bom.C.R. 88, Kotak Mahindra Finance Ltd. v/s. T. Thomas Educational Trust & ors., 2003 (5) Bom.C.R. 579, Union of India v/s. Tolani Bulk Carriers Ltd., 2002(2) Bom.C.R. 256** and the judgment of the Division Bench of Calcutta High Court in the case of **Cityscape Developers Pvt. Ltd. v/s. Alka Builders Pvt.Ltd. (2000) 1 CALLT 346(HC)**. **It is submitted that in any suit which is instituted** where only part of cause of action has arisen in the jurisdiction of this court, then there is inherent lack of jurisdiction in this court. In support of this submission reliance is placed on the judgment of the Division Bench of this Court in the case of **Devidatt Ramniranjandas v/s. Shriram Narayandas**, 1931 Bombay Law Reporter Vol.XXXIV, page 236.

7. As observed above the matters are being heard by me pursuant to the directions issued by the Supreme Court. Obvisouly, therefore, to determine what is the scope of hearing, reference has to be made to the order of the Supreme Court. Perusal of the order of the Supreme Court shows that a petition under Section 25 of the Code of Civil Procedure was filed by Jet Airways seeking an order from the Supreme Court for transfer of two petitions filed under Section 9 by Sahara in the Lucknow court. Perusal of the order of the Supreme Court further shows that the Supreme Court noted that it has gone through the Escrow agreement. Then it noted the contentions made on behalf of the Jet Airways that parties agreed that all legal proceedings shall be taken at Bombay and then the Supreme Court observed "On the basis of these clauses and considering that the parties agreed for all legal proceedings to be initiated at Bombay. It is contended that the two proceedings pending before the District Judge, Lucknow, be directed to be transferred to the High Court at Bombay." Thus, the question that the Supreme Court was considering was whether two petitions filed by Sahara at Lucknow are to be transferred to this court. The submissions made on behalf of Sahara opposing the transfer application have been referred to by the Supreme

Court in following manner:

> "Vehemently opposing the petition seeking transfer, it was contended by the learned Counsel for Sahara that the main agreement between the parties is Share Purchase Agreement dated 18th January, 2006. All other agreements, be it escrow agreement, pledge agreement or guarantee agreement, are only to effectuate the Share Purchase Agreement. It has been pointed out by the learned counsel that the Share Purchase Agreement was executed at Lucknow and that all the Directors of Sahara are residents of Lucknow. It is also submitted that the situs of arbitration being at Bombay by itself does not confer jurisdiction to the Bombay court. The learned counsel also sought to rely on Section 2(e) and Section 20 of the Arbitration and Conciliation Act, 1996 to contend that Bombay High Court has no jurisdiction whatsoever and, therefore, to submit that since there is inherent lack of jurisdiction at Mumbai, the order of transfer may not be made.

8. It is clear from the submissions made on behalf

of Sahara before the Supreme Court, which are referred to as above by the Supreme Court in its judgment that the Petition for transfer of two petitions filed by Sahara in Lucknow to this court was opposed on the ground that there is an inherent lack of jurisdiction in this court to entertain those petitions and not on the ground that the Bombay High Court does not have the jurisdiction to entertain Section 9 petition filed by Jet Airways before the Bombay High Court or that the Bombay High Court does not have jurisdiction to entertain the summary suit filed by Jet Airways before the Bombay High Court. It is crystal clear that the stand of Sahara before the Supreme Court was that Bombay High Court inherently lacks jurisdiction to entertain Section 9 petitions filed by Sahara before Lucknow court and therefore the Supreme Court should not make an order for transfer of those petitions to this Court.

9. The Supreme Court, thereafter, notes that under Section 25 the Supreme Court can make an order for transfer of a matter to a court which inherently lacks jurisdiction to entertain that matter. But it does not desire to make that order, in stead the Supreme Court directed this court to make an inquiry to find out whether there is inherent lack of

jurisdiction in this court to entertain two petitions filed by Sahara at Lucknow, then those two petitions shall stand transferred to this court and then it is observed that in case those petitions have been transferred to this court, then, those two petitions, one petition filed by Jet Airways in this court and the summary suit filed by Jet Airways in this court should be heard by one Judge of this court. The relevant observations of the Supreme Court in the order read as under:-

> In fact, we did not permit the learned counsel for the respondents to urge the argument that the Bombay High Court lacks inherent jurisdiction and left it to be agitated before the Bombay High Court. It would be open to the respondents herein to urge before the High Court at Bombay that it inherently lacks jurisdiction. When such a point is raised, it would be decided in accordance with law. In the event the High Court comes to the conclusion that it lacks inherent jurisdiction, the consequences will follow. If, however, it is found that the Bombay High Court has also jurisdiction then all the proceedings, namely, the two initiated by the

petitioner and the two by the respondents at Lucknow would be heard by the Bombay High Court.

10.

2. The Share Purchase Agreement dated 18-1-2006 was entered into between Jet Airways and shareholders of Sahara Airways for the shares of Sahara Airways Limited hold by seven shareholders of that Company.

Admittedly, this agreement there is an arbitration clause.

. Then there is an agreement entered into between the parties dated 17-1-2006 (herein after referred to as Escrow Agreement) in effect to keeping of certain funds in escrow with the ICICI Bank Ltd.

. There is one more agreement between the parties calls "Pledge Agreement" and lastly there is an agreement for guarantee between Jet Airways and Mr.Subrata Roy Sahara whereby he has given guarantee in relation to repayment of the Advance amount. Because dispute arose between the parties, Sahara Airways filed two petitions in the District Court at Lucknow under Section 9 of the Arbitration & Conciliation Act. In those two petitions some interim orders were passed by the District Court at Lucknow. Jet Airways also filed Petition under Section 9 before this Court being Arbitration Petition No.261 of 2006. Jet Airways also filed Summary Suit No.1822 of 2006 in this court for enforcement of guarantee given by Mr.Roy.

. Jet Airways, thereafter, moved an application before the Supreme Court under Section 25 of the

Civil Procedure Code for transfer of two petitions filed by Sahara Airways under Section 9 of the Arbitration Act in the District court at Lucknow.

. That Transfer Petition has been decided by the Supreme Court by its order dated 28th August, 2006. By that order the Supreme Court has held that this court shall hear the parties to find whether this court lacks inherent jurisdiction to entertain the petition. It is held that in case this court finds that it has jurisdiction to entertain the petitions between the parties, all the proceedings i.e. two proceedings filed in Lucknow district court and two proceedings filed in this court shall be heard by this court.

3. The learned Counsel appearing for Jet Airways submits that because an application was filed by Jet Airways for transfer of the two petitions filed by Sahara Airways at Lucknow district court, pursuant to the order of the Supreme Court this court has to make ad-interim order whether Jet Airways could have filed their petitions under Section 9 of the Arbitration Act before this Court. "Court" is defined by Section 2(1)(e) of the Act.

> "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

According to the learned Counsel appearing for Sahara Airways to decide a particular court has jurisdiction to entertain the proceeding an inquiry has to be made to find out whether had there been no arbitration clause a suit on the same subject matter could have been instituted in the court. The learned Counsel submits that the jurisdiction of this court to entertain the suit related by Clause 12 of the Letters Patent and therefore in view of the provisions of Clause 12 of the Letters Patent, because the Jet Airways/Respondent in the petition filed by Sahara Airlines carries on its business within the jurisdiction of this court, had there been no arbitration in the share purchase agreement, Sahara Airlines should have instituted a civil suit

in this Court. Therefore, this court will have the jurisdiction to entertain the petition filed under Section 9 at Lucknow district court. It is further submitted that even otherwise there are clauses in the Escrow agreement and Pledge agreement which confer exclusive jurisdiction on the Bombay High Court to entertain legal proceedings arising out of both agreements. It is the case of Sahara Airways itself that the Escrow agreement, the Pledge agreement and the Share Purchase agreement are in one scheme and therefore according to the learned Counsel as according to Sahara Airlines itself, Escrow Agreement and Pledge Agreement are part and parcel of the Share Purchase Agreement, this court will get the jurisdiction to entertain the suit. It is clear from the order passed by the Supreme Court that it is not necessary for this court to find out the exclusive jurisdiction to entertain the suit, it is enough that if this court finds that it does not lack inherent jurisdiction to entertain the proceedings, then this court according to order of the Supreme Court get jurisdiction to entertain the suit. According to the learned Counsel it is not necessary for this court to make an inquiry pursuant to the order of the Supreme Court at this juncture whether the Section 9 petition filed by Jet Airways in this court is maintainable or

not? Because there was no application made by anybody for transfer of the proceedings instituted by Jet Airways in this Court. There was an application only made by Jet Airways in the Supreme Court for transfer of proceedings instituted by Sahara Airways at Lucknow district court and therefore, according to order of the Supreme Court the court has to make an inquiry whether this court lacks inherent jurisdiction to entertain the suit which has been instituted by Sahara Airways at Lucknow district court. The learned Counsel further submits that in any case this court has the jurisdiction to entertain Section 9 Petition filed by Jet Airways, because part of cause of action for filing that petition has definitely arisen within the jurisdiction of this court and because of the clauses incorporated in the Escrow agreement and the Pledge agreement, this court has exclusive jurisdiction to entertain Section 9 Petition. It is further submitted that once pursuant to the order of the Supreme Court, Section 9 petitions filed by Sahara Airways are transferred to this court and are entertained by this court because of Section 42, all other applications have been filed before this Court. So far as summary suit is concerned, it is submitted that it is based on the guarantee agreement and in the guarantee agreement

there is a clause conferring exclusive jurisdiction on this court and therefore, this court has the jurisdiction to entertain the summary suit also.

4. On behalf of Sahara Airways, on the other hand, it is submitted that an application for transfer of the proceedings filed in Lucknow district court to this court was made because Jet Airways filed Section 9 petition in this court, therefore, this court has first to make an inquiry whether Section 9 petition and summary suit filed by Jet Airways in this Court being maintainable or not and if this court finds that it lacks inherent jurisdiction to entertain Section 9 petition and summary suit, then there is no question of transferring the two Section 9 petitions filed by Sahara Airways. It is submitted that so far as Section 9 petition as also the summary suit are concerned, at the best it can be said that only part of cause of action has arisen within the jurisdiction of this court, therefore, in terms of the provisions of Clause 12 of Letters Patent, this court cannot entertain the suit without Petitioner/Plaintiff obtaining Clause 12 leave. In the present case admittedly Jet Airways has not obtained Clause 12 leave and therefore neither Section 9 petition nor the summary suit are maintainable in this court. In

support of this submission reliance is placed on a judgment of the learned single judge of this Court in the case of TATAxxxxxxxx It is submitted that in any suit which is instituted where only part of cause of action has arisen in the jurisdiction of this court, then there is a lack of inherent jurisdiction in this court. In support of this submission reliance is placed on the judgment of the Division Bench of this Court in the case of **Devidatt Ramniranjandas v/s. Shriram Narayandas**, 1931 Bombay Law Reporter Vol.XXXIV, page 236.

5. On the other hand, on behalf of the Jet Airways it is submitted that without proceedings are maintainable before the court with the leave of the court it cannot be said that the court lacks inherent jurisdiction to entertain the proceedings. In support of this submission reliance is placed on a judgment of the Supreme Court in the case of **Hira Lal Patni, v/s. Sri Kali Nath, AIR 1962 SC 199**.

6. Now, if in the light of these rival submissions the record of the case is perused, it becomes clear that a decision on the question which falls for consideration has to be taken in the light of the directions issued by the Supreme Court in its

judgment in the Transfer Petition. It is clear from the judgment of the Supreme Court that Transfer Petition was filed by Jet Airways for transfer of two arbitration petitions filed by Sahara Airways at Lucknow. Perusal of the judgment further shows that the question that the Supreme Court was considering was whether two petitions filed by Sahara Airways at Lucknow were to be transferred to this court. For that purpose the judgment of the Supreme Court shows that the Supreme Court examined the contents of two petitions filed by Sahara Airways at Lucknow. It is pertinent to note that the Supreme Court has not at all examined the contents either of the petition filed by Jet Airways in this Court or the summary suit filed in this court. The Supreme Court after examining the contents of the Transfer Petition and the relevant clauses in the agreement between the parties made the following observations:

7. It is clear from the above observations that though the Supreme Court finds that under Section 25 it can transfer proceedings to a court which does not have any jurisdiction to entertain the proceeding, still the Supreme court wanted this court to make an

inquiry as to whether this court lacks inherent jurisdiction in the matter. It is clear from the observations of the Supreme Court quoted above that an inquiry that this court was to make was whether this court has jurisdiction to entertain the dispute between the parties. Now, it is clear that there are disputes between the parties. Some of the disputes have been raised by Sahara Airways and some of the disputes have been raised by Jet Airways. Therefore, it cannot be said with certainty that this court will have jurisdiction to entertain the disputes raised by Sahara Airways against Jet Airways, then, in my opinion, it cannot be said that this court lacks inherent jurisdiction in the matter. It is clear from the observations of the Supreme Court quoted above that it is necessary that this court has to make an inquiry whether this court will have the jurisdiction to entertain Section 9 petition filed by Sahara Airways in Lucknow. Perusal of the submissions made on behalf of Sahara Airways before the Supreme Court which have been referred to by the Supreme Court in the order shows that the argument was that as the Bombay High Court lacks the jurisdiction to entertain any proceedings about the disputes between the parties, petitions filed by Sahara Airways at Lucknow district court should not

be transferred. Obviously, therefore, an inquiry has to be made whether this court lacks inherent jurisdiction to entertain Section 9 petitions filed by Sahara Airways before the court at Lucknow district court. Admittedly, both the petitions have been filed by Sahara Airways under Section 9 of the Arbitration Act. Perusal of Section 9 shows that an application under that provision is to be made before the court. The term court is defined by Section 2(10(e) of the Act. It reads as under:-

> "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

8. Perusal of the above definition shows that in order to decide as to which court will have the jurisdiction an inquiry has to be made as to which court could have jurisdiction to entertain a civil

suit on a same subject matter and if there is no agreement between the parties. In so far as the jurisdiction of this court to entertain the petition is concerned, it is clause 12 of the Letters Patent which is relevant. Clause 12 reads as under:-

> 12.Original jurisdiction as to suits
>
> And We do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immoveable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the

jurisdiction of the Small Cause court at Bombay, or the Bombay City Civil Court.

9. Perusal of the above quoted clause 12 shows that if the Defendant at the time of commencement of the suit carries on business within the territorial jurisdiction of this court, then this court can entertain the suit of every description. The In Section 9 petition filed by Jet Airways, admittedly Jet Airways carries on business within the jurisdiction of this court, and therefore I have no doubt that the civil suit could have been entertained by this court, had it been filed by Sahara Airways in this court for deciding the disputes arising out of the Share Purchase Agreement. It is further to be seen here that it is the case of Sahara Airways itself that Escrow agreement and the Pledge agreement and the Share Purchase Agreement are in one scheme and that the escrow agreement and the pledge agreement was entered into to give effect to the said Share Purchase agreement. Perusal of following clauses of the Escrow agreement and Share Purchase agreement shows that they confer exclusive jurisdiction on this court to entertain the suit in relation to the dispute arising out of escrow

agreement and the pledge agreement. Admittedly the Share Purchase agreement has no substance. In my opinion, if these agreements are in one scheme and they cannot be separately maintainable, then the fact that there is a clause in the two agreements conferring exclusive jurisdiction on this court indicated that even in relation to the disputes arising out of the Share Purchase Agreement this court will have the exclusive jurisdiction. So far as summary suit is concerned, it is based on a guarantee agreement. The guarantee agreement has following clauses, which confer exclusive jurisdiction on this court to entertain the disputes arising out of the guarantee agreement. Therefore, this court will have the jurisdiction to entertain the summary suit also. In any case, the jurisdiction of this court to entertain the proceedings, an inquiry into jurisdiction of this court to entertain the suit suit will have to be made on the basis of the averments which are incorporated in the civil suit. If that is so, at this juncture it cannot be said that this court lacks inherent jurisdiction to entertain the summary suit. In any case, even assuming that the summary suit and the Section 9 petition filed by Jet Airways should have been entertained by this court only after Clause 12 leave

is obtained, in my opinion, that proceeding can be instituted in this court after obtaining leave of that very court will not mean that that court lacks jurisdiction to entertain the suit. It can be said that the court has the jurisdiction to entertain the proceedings subject to the court granting leave to the litigant to institute a suit. The Supreme Court by its order in the Transfer Petition has observed that an inquiry is to be made whether there is an inherent lacks of jurisdiction in this court to entertain the proceedings. Therefore, even assuming that an inquiry has to be made by this court to find out whether this court has the jurisdiction to entertain summary suit and Section 9 petition, an inquiry is to be restricted to whether this court lacks inherent jurisdiction to entertain Section 9 petition and civil suit. It is further to be seen here that if because Jet Airways carries on business in Mumbai this court gets jurisdiction to entertain Section 9 petition filed by Sahara Airways. Then because it is the case of Sahara Airways itself that their application was filed in earlier point of time because of the provisions of Section 42 of the Arbitration Act Jet Airways will have to file an application only in this court and therefore for these reasons also even without clause 12 leave,

Section 9 petition filed by Jet Airways would be maintainable.

10. Taking overall view of the matter, therefore, in my opinion, it cannot be said that this court lacks inherent jurisdiction to entertain the petitions filed by Sahara Airways. In the conclusion, in terms of the order of the Supreme Court all the four proceedings will have to be heard by this court.

...